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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,063	11/27/2001	Kenneth W. Michaels	J-3153A	9539

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT PAPER NUMBER

3754

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,063

Applicant(s)

MICHAELS ET AL.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 14-19, 21, 27-35 and 37 is/are pending in the application.
- 4a) Of the above claim(s) 7, 9-13, 20, 22-26, 36 and 38-78 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 8, 28-33 and 37 is/are allowed.
- 6) ☒ Claim(s) 14-19, 21, 27, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14-16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens 3,912,132.

Stevens discloses a container for use with dispensing apparatus 20 that dispenses pressurized product stored in the container (col. 1, ll. 5-18), which comprises a container body defining a space for storage of the product (note: it is inherent that the device of Stevens has a container body defining a space for storage of the product in as much as the applicant's claimed invention), a valve 10 in fluid communication with the space, a hollow stem 11 in fluid communication with the valve and has an exterior end that has at least one side opening 17 therethrough and wherein the stem is adapted for engagement with the apparatus to permit dispensing of product through the at least one side opening into a chamber (2) of the dispensing apparatus (col. 2, ll. 41-56), the exterior end includes a profiled end (15) surface that defines the at least one side opening as seen in Figure 1, the profiled end surface forms a slot (col. 2, ll. 51-56).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 17-19,27 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens 3,912,132 in view of D. Young 1,445,029.

Lawrence has taught all the features of the claimed invention except that the slot defines first and second side openings. D. Young teaches the use of a hollow stem 11 with an exterior end that has at least one side opening/slot (15, 15a, 15b) therethrough, the slot defines first and second side openings (col. 2, ll. 69-72), each of the first and second side openings is defined by a base surface and a pair of side surfaces (see Figure 5 for location of the base surface, which was previously indicated in the last Office Action of paper No. 11), wherein the side surfaces are substantially perpendicular to the base surface as seen in Figures 3 and 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stevens' slot (17) with the multiple slots (15, 15a, 15b) taught by D. Young, in order to provide a selected particular delivery flow rate as desired.

Allowable Subject Matter

5. Claims 1-6,8,28-33 and 37 are allowed.

Response to Arguments

6. Applicant's arguments filed 7/31/2003 have been fully considered but are moot in view of the new ground(s) of rejection. Any remaining arguments have been fully addressed in the above rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 and for after final communication is (703)-872-9303.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0861.

FN

September 10, 2003

 9/10/03


Gene Mancene
Supervisory Patent Examiner
Group 3700